

**From:** [Butler, David](#)  
**To:** [Dave@MyRide-SC.com](#); [angie@thewalkerresidence.com](#); [Bateman, Andrew](#); [dave@lumilor.com](#)  
**Cc:** [Boyd, Jocelyn](#); [Stark, David](#); [Wessinger-Hill, JoAnne](#); [PSC Contact](#)  
**Subject:** FW: [External] Questions Regarding Application of MyRide SC, LLC Docket No.: 2022-88-T  
**Date:** Monday, April 18, 2022 4:06:30 PM  
**Attachments:** [ATT00001.htm](#)  
[MyRide Letter to PSC, David Butler.pdf](#)  
[ATT00002.htm](#)

**COMMUNICATION IN COMPLIANCE WITH COMMISSION EX PARTE COMMUNICATIONS POLICY AND IN COMPLIANCE WITH SOUTH CAROLINA CODE SECTION 58-3-260 AND PROVIDES NOTICE, ALONG WITH A COPY OF THE WRITTEN COMMUNICATION, TO ALL PARTIES OF RECORD WITH OPPORTUNITY FOR RESPONSE BY ALL PARTIES:**

Dear All Parties of Record:

In compliance with South Carolina law prohibiting an ex parte communication (i.e., one which does not include all parties of record) and the Commission's Ex Parte Communication Policy, attached is a copy of the unsolicited email received today from Applicant Representative David Swanner, and all attachments. A copy of the Commission Directive Order No. 2022-171 (Order Requesting Office of Regulatory Staff to Investigate Application and Letter of Protest in Docket No. 2022-88-T) and Order No. 2022-206 (Order Revising Commission's Ex Parte Communications Policy).

**Please be advised in accordance with South Carolina Section 58-3-260, and Commission Ex Parte Communication Policy (see Order No. 2022-206) prohibits any Commissioner, hearing officer and commission employee from engaging in any *ex parte* communication, whether directly or indirectly, that is not allowed or prohibited by S.C. Code Ann. §58-3-260(B) & (C), I am attached a copy of all attachments as well as the actual email received from Mr. David Swanner.**

**The Commission expects the Commissioners, hearing officers, and commission employees not to engage in any *ex parte* communication, whether directly or indirectly, that is not allowed or prohibited by S.C. Code Ann. §58-3-260(B) & (C). Any prohibited *ex parte* communication, whether initiated or received, or discovered or known by the Commissioner, hearing officer, or commission employee, is strictly discouraged and requires prompt action as set forth below, as well as subjects the Commissioner, hearing officer, or commission employee to certain disciplinary action(s) as provided by law, policy or regulation.**

Specifically, SC Code Section 58-3-260(B) prohibits any ex parte communication as follows:

“(B) Except as otherwise provided herein or unless required for the disposition of ex parte matters specifically authorized by law, a commissioner, hearing officer, or **commission employee shall not communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any person without notice and opportunity for all parties to participate in the communication**, nor shall any person communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any commissioner, hearing officer, or commission employee without notice and opportunity for all parties to participate in the

communication.

S.C. Code Ann. Section 58-3-260(B). Consequences for not following the prohibition against any ex parte communication apply to Commissioners, hearing officers, commission employees, and to any person in Subsection (J) of South Carolina Section 58-3-260 as follows:

(J) **Any commissioner, hearing officer, commission employee, or person who wilfully violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred fifty dollars or imprisoned for not more than six months.** If a commissioner wilfully communicates with any party or person or if any person or party wilfully communicates with a commissioner regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding less than ten business days prior to the scheduled hearing on the merits, during the hearing or after the hearing but prior to the issuance of a final order, including an order on rehearing, in a proceeding where such facts, law, or other matter is or can reasonably be expected to become an issue, the commissioner shall be removed from office. If a hearing officer or commission employee wilfully communicates with any party or person or any party or person wilfully communicates with a hearing officer or commission employee regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding less than ten days prior to the scheduled hearing on the merits, during the hearing or after the hearing but prior to the issuance of a final order, including an order on rehearing, in a proceeding where such facts, law, or other matter is or can reasonably be expected to become an issue, the hearing officer or commission employee shall be terminated from employment by the commission. **For purposes of this section: (1) "wilful" means an act done voluntarily and intentionally with the specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or disregard the law, and (2) a violation of the provisions of this section must be proved by clear and convincing evidence before a commissioner, hearing officer, or commission employee can be removed from office or terminated from employment.**

S.C. Code Ann. Section 58-3-260(J) (emphasis added).

A person and a proceeding is defined by South Carolina law as follows:

(1) "Proceeding" means a contested case, generic proceeding, or other matter to be adjudicated, decided, or arbitrated by the commission.

(2) **"Person" means a party to a proceeding pending before the commission**, a member of the Office of Regulatory Staff, a representative of a party to a proceeding pending before the commission, individuals, corporations, partnerships, limited liability companies, elected officials of state government, and other public and elected officials.

S.C. Code Ann. Section 58-3-260(A)(1) & (2) (emphasis added).

**The email from Applicant David Swanner has not been responded to by me or Commission staff and such email was not initiated or requested by me or any Commission employee. I, David**

Butler, am merely the recipient of an unrequested communication. The communication appears to be initiated by Applicant Representative David Swanner inquiring about the status of his application. However, the communication from Applicant Representative David Swanner does not show, indicate on its face, or include all parties listed in Docket No. 2022-88-T. Additionally, the email does make inquiry and attempts to discuss with Commission staff outside the presence of other parties a pending matter of the Commission. In accordance with the law and Commission policy, all email or correspondence related to this email and communication received from Applicant Representative David Swanner shall posted on the DMS in this Docket 2022-88-T in compliance with the law and Commission policy. This responsive email is the only response by me or Commission Staff to the potential ex parte communication email from David Swanner which was received by email today.

This email is also in compliance with both the Commission Ex Parte Communications Policy and SC Code Section 58-3-260. The Commission policy provides in Section II.A.(4):

**“The affected** Commissioner, hearing officer, or **commission employee receiving**, initiating, or **discovering the *ex parte* communication must also advise and notify in writing** (e.g. email, letter or memorandum) **all parties to any existing or current proceeding or matter pending before the Commission that information and documents related to any oral, written or electronic *ex parte* communication as described above in items I(A)(1)(a) thru I(A)(1)(c) has been placed on the record or filed in the DMS.** Service of this written notification shall be made in same manner as service or notice is provided by the Chief Clerk of the Commission as provided by regulation [10 S.C. Code Ann. Regs. 103-817.C(3)(d)] or as otherwise allowed by Commission practice and procedures, including written agreement by the parties to a proceeding.”

(emphasis added). All parties please note that upon receiving this email and the notice of the potential ex parte communication, you may rebut the communication as follows per Section II.A.(5) of the Commission’s Ex Parte Communication Policy:

“Subsection (D) of Section 58-3-260 provides that prior to serving in a proceeding, if a commissioner, hearing officer, or commission employee receives an ex parte communication of a type that may not properly be received while serving, then any party who desires to rebut the contents of the communication (which has been placed on the record or DMS) must request and be granted the opportunity to rebut the contents within ten (10) days of receiving the notice of the ex parte communication.

Parties affected by a violation may agree to a resolution of any claim regarding such violation as it relates to the proceeding, issue or matter be adjudicated, decided, or arbitrated by the Commission concerning any of the state’s public utilities. Such resolution may include the waiver of a hearing and the waiver of the obligation to report violations under subsection (I) of South Carolina Code Section 58-3-260 to the State Regulation of Public Utilities Review Committee.”

It is believed that the email from David Swanner is not intentional but that it is an inadvertent prohibited ex parte communication as explained in Section II.C of the Commission’s Ex Parte Communications Policy and which provides the following:

**C. Inadvertent Ex Parte Communication.** If the *ex parte* communication is inadvertent, the affected Commissioner, hearing officer, or commission employee receiving, initiating, or discovering the *ex parte* communication must disclose as in items II(A)(1) thru II(A)(5) above as soon as it is known to relate to a filing or an issue in a proceeding or pending matter.

After receipt of notice of an inadvertent *ex parte* communication, any party who desires to rebut the contents of the *ex parte* communication being placed on the record or DMS must request the opportunity to rebut the contents within ten (10) days of receiving the notice of the *ex parte* communication, which means ten (10) days from the date the party received notice that the *ex parte* communication was placed on the record or placed in the DMS. The party shall be granted the opportunity to rebut the contents of the *ex parte* communication placed on the record or in the DMS.

If no party rebuts the inadvertence of the *ex parte* communication within ten (10) days after notice of the *ex parte* communication being placed on the record or in the DMS, the *ex parte* communication shall be presumed inadvertent. Parties affected by a violation may agree to a resolution of any claim regarding such violation as it relates to the proceeding, issue or matter be adjudicated, decided, or arbitrated by the Commission concerning any of the state's public utilities, and the provisions of subsection (J) of S.C. Code Ann. 58-3-260(J) shall not apply.

For the purposes of this section, "as soon as it is known to relate to a filing" shall mean the same business day in which the Commissioner, hearing officer or commission employee discovers or knows that such *ex parte* communication relates to the new matter or filing with the Commission; or if discovered or known after the close of normal business hours, during a holiday or weekend, then "as soon as it is known to relate to a filing" shall mean the next normal or regular business day of the Commission."

#### **HOW CAN APPLICANT REPRESENTATIVE COMPLY WITH SOUTH CAROLINA LAW AND THE COMMISSION'S EX PARTE COMMUNICATIONS POLICY?**

All parties and their representatives must comply with all laws and regulations whether they are represented by legal counsel or if they are pro se. If you are pro se, please find the Commission's Pro Se Litigant's Guide on its website for additional information which may be helpful.

#### **WHERE DO YOU FIND THE EMAIL ADDRESS OF ALL PARTIES OF RECORD WHO MUST BE INCLUDED ON ALL COMMUNICATIONS WITH THE COMMISSION STAFF TO AVOID A VIOLATION OF SOUTH CAROLINA PROHIBITING AN EX PARTE COMMUNICATION (I.E., A COMMUNICATION OF ANY TIME (E.G., WRITTEN, ORAL, ETC) WHERE ALL PARTIES ARE NOT INCLUDED?**

Email address and physical address of all parties can be found on the Commission DMS system and in the Docket for each matter.

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**From:** Dave Swanner <dave@lumilor.com>

**Sent:** Monday, April 18, 2022 2:02 PM

**To:** Butler, David <david.Butler@psc.sc.gov>

**Subject:** [External] Questions Regarding Application of MyRide SC, LLC Docket No.: 2022-88-T

David,

We've been having difficulty getting a Class C (Non-emergency) Certificate for our company. We were shutting down S&W Transport by judicial dissolution because of not being able to work with our partners. We had put substantial money into the company and were buying the assets and form a new corporation. We did that, but made the mistake of applying for a name change from the OldCo's certificate. Our ex-business partners objected and we filed for a new application.

When we filed for a new application, two local transportation providers (including the ex-partner) filed rather specious objections. As of right now we are not on the Commission docket and have been shut down since 3/14/22.

I've written a letter explaining the situation in more detail with the appropriate documents. If you could help us in determining what we need to do to resolve this situation, we would be very grateful.

The attached PDF has all the documents with hyperlinks to the appropriate docket numbers on the PSC Website for the companies discussed, hyperlinks to take you to the document mentioned.

I've also bookmarked the Exhibits, so you can click and go directly to any document you want. If you don't have View Bookmarks turned on, you can click on the Bookmark icon on the left side of the screen and it will give a listing of the exhibits. The Bookmark icon looks like a Chevron. Clicking on any of the bookmarks will take you directly to that document.

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